

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Foulger *et al.*

Appl. No. 09/841,167

Filed: April 25, 2001

For: **Method, System, and Computer
Program Product for Employment
Market Statistics Generation and
Analysis**

Confirmation No. 4114

Art Unit: 2121

Examiner: Robertson, David

Atty. Docket No.: 2222.9470001

Reply Brief Under 37 C.F.R. § 41.41

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

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Madam:

Appellants filed a Brief on Appeal Under 37 C.F.R. § 41.37 to the Board of Patent Appeals and Interferences for the above-captioned patent application on July 24, 2008, appealing the decision of the Examiner in the Final Office Action mailed January 4, 2008. Appellants are in receipt of the Examiner's Answer Under 37 C.F.R. § 41.39 mailed October 20, 2008 (and mailed again November 13, 2008), which included new grounds of rejection. In reply to the Examiner's Answer, Appellants submit this Reply Brief Under 37 C.F.R. § 41.41, traverse the new grounds of rejection, and request that the appeal be maintained.

It is believed that no extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account No. 19-0036.

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I. Status of Claims (37 C.F.R. § 41.37(c)(1)(iii))

This application was originally filed as U.S. Application No. 09/841,167 on April 25, 2001, with 33 claims. In response to an Office Action mailed June 28, 2005, Appellants filed an Amendment and Reply Under 37 C.F.R. § 1.111 on December 22, 2005, in which no changes to the claims were made. In response to a Final Office Action mailed February 27, 2006, Appellants filed a Reply Under 37 C.F.R. § 1.116 on April 28, 2006, in which no changes to the claims were made. In response to an Advisory Action mailed May 17, 2006, Appellants filed a Notice of Appeal on August 24, 2006. On March 26, 2007, Appellants filed a Request for Continued Examination with an Amendment and Reply Under 37 C.F.R. § 1.111, in which claims 1, 2, 7, 8, 11-14, 19, 20, 24, 25, 30, and 31 were canceled, claims 3-6, 9, 10, 15-18, 21-23, 26-29, 32, and 33 were amended, and new claims 34-46 were added. In response to an Office Action mailed April 26, 2007, Appellants filed a Reply Under 37 C.F.R. § 1.111 on October 26, 2007, in which no changes to the claims were made. In response to a Final Office Action mailed January 4, 2008, Appellants filed an Amendment and Reply Under 37 C.F.R. § 1.116 on May 5, 2008, in which claims 3, 4, 6, 9, 10, 26, 27, 29, 32, 33, 35-37, and 44-46 were amended. In response to an Advisory Action mailed May 12, 2008, in which the Examiner entered the Amendment and Reply Under 37 C.F.R. § 1.116, but maintained the final rejection, Appellants filed a Notice of Appeal on May 30, 2008. An Appeal Brief Under 37 C.F.R. § 41.37 was filed on July 24, 2008. In response to the Examiner's Answer Under 37 C.F.R. § 41.39 mailed October 20, 2008, Appellants submit the present Reply Brief Under 37 C.F.R. § 41.37.

Claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 are pending. Claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 stand finally rejected and are presented on appeal.

II. Grounds of Rejection To Be Reviewed on Appeal (37 C.F.R. § 41.37(c)(1)(vi))

The Examiner has finally rejected claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2003/0229638 to Carpenter *et al.* (“the Carpenter Publication”).

Additionally, the Examiner’s Answer included new grounds of rejection, further rejecting claims 3-6, 9, 10, and 34-37 under 35 U.S.C. § 101 as allegedly being ineligible for patenting.

Appellants request that the appeal be maintained.

Accordingly, the grounds of rejection to be reviewed on appeal are:

A. Ground 1

Whether claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 are anticipated by the Carpenter Publication.

B. Ground 2

Whether claims 3-6, 9, 10, and 34-37 are ineligible for patenting.

III. Argument (37 C.F.R. § 41.37(c)(1)(vii))

There are two separate grounds of rejection to be reviewed on appeal.

A. The Rejection of Claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 Under 35 U.S.C. § 102(e) as Allegedly Being Anticipated by the Carpenter Publication Is Improper

The Examiner's Answer, at page four, maintained the rejection of claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 under 35 U.S.C. § 102(e) as allegedly being anticipated by the *Carpenter Publication*, citing prior-filed U.S. Provisional Patent Application No. 60/180,368 to Carpenter *et al.* ("the Carpenter Provisional") as allegedly providing support for the disclosure in the *Carpenter Publication* of the features of the subject claims. Contrary to the Examiner's contentions, however, the *Carpenter Publication* does not anticipate any of claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 because the *Carpenter Provisional* does not support at least one feature of each of these claims and the *Carpenter Publication* is therefore not entitled to the benefit of the earlier filing date with respect to these claims.

1. The Examiner Concedes That the Effective Filing Date of the Present Patent Application Is the April 25, 2000, Filing Date of the Foulger Provisional

The Examiner's Answer, at page ten, acknowledges that the "effective filing date of the present application [is] (4/25/2000)[,]" which is the filing date of U.S. Provisional Patent Application No. 60/199,376 ("the Foulger Provisional") to which the present patent application claims benefit. The April 25, 2000, filing date of the Foulger Provisional precedes the February 5, 2001, filing date of the cited *Carpenter Publication*. Nowhere does the Examiner assert that the present application is not entitled to the April 25, 2000, filing date of the Foulger Provisional.

2. ***The Examiner Concedes That in Order for the Carpenter Publication to Anticipate Claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46, Each of These Claims Must Be Anticipated by the Carpenter Provisional***

The Examiner's Answer, at page ten, states (portions in brackets and emphasis added):

With respect to support in the Carpenter provisional, Examiner notes that the Carpenter application (US Appl. No. 10/129,416) [“the Carpenter *Publication*”], is a National Stage filing of PCT/US01/03741, which in turn claims benefit to U.S. Provisional Appl. No. 60/180,368 [“the Carpenter *Provisional*”]. Thus, ***if support can be reasonably found*** in the Carpenter provisional, ***then*** the Carpenter patent [sic; *Publication*] enjoys [the] benefit of an earlier filing date than the earlier effective filing date of the present application[.]

Stated alternatively, if support can *not* be reasonably found in the Carpenter *Provisional*, then the Carpenter *Publication* does *not* enjoy the benefit of an earlier filing date than the effective filing date of the present application, and can *not* support a rejection under 35 U.S.C. § 102.

The Examiner's Answer, at page nine, further states (without support/citation) “[t]he support found in the provision [sic] does not have to be verbatim as long as one reasonably feels that the inventor had possession of the invention at time of filing.” Appellants submit that this stated standard is, at least as applied by the Examiner, an incomplete characterization of the standard under which the Examiner must assess the adequacy of the teachings of the specification of a provisional patent application in support of a rejection under 35 U.S.C. § 102(e).

Appellants submit that the asserted prior art disclosure must satisfy both the ***written description*** requirement and the ***enablement*** requirement of the first paragraph of 35 U.S.C. § 112 to support a rejection under section 102(e). For example, the Manual of Patent Examining Procedure at section 2121.01 states, in relevant part, (emphasis added):

“In determining that quantum of prior art disclosure which is necessary to declare an applicant's invention 'not novel' or 'anticipated' ***within section 102***, the stated test is whether a reference contains an '***enabling disclosure***'” *In re Hoeksema*, 399 F.2d 269, 158 USPQ 596 (CCPA 1968). The disclosure in ***an assertedly anticipating reference must provide an enabling***

disclosure of the desired subject matter; mere naming or description of the subject matter is insufficient, if it cannot be produced without undue experimentation. *Elan Pharm., Inc. v. Mayo Found. For Med. Educ. & Research*, 346 F.3d 1051, 1054, 68 USPQ2d 1371, 1376 (Fed. Cir. 2003)[.]

Thus in order for the Carpenter *Publication* to anticipate claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46, the Examiner must establish that each of these claims is supported (both described and enabled) by the Carpenter *Provisional*. See also *Ex parte Yamaguchi*, No. 2007-4412, slip op. at 7-9 (B.P.A.I. Aug. 29, 2008).

As discussed below, Appellants submit that the Examiner has failed to satisfy this burden.

3. ***Neither the Carpenter Publication Nor the Carpenter Provisional Anticipates the Claimed Feature of Calculating a Ratio of Resumes Associated with [a] Matched Employment Market Category to Job Listings Associated with the Matched Employment Market Category***

The Examiner's Answer, at page eleven, states the following basis for anticipation of the feature of "calculating a ratio" of resumes to job listings (emphasis added):

Specifically, ***with regards to the "calculating a ratio" feature (1), Examiner notes reliance on the Carpenter nonprovisional, specifically paragraphs 0046-7, 0054-6, to teach this limitation.*** Documents are classified as job-postings, resumes, or irrelevant. The classification further includes location information (city, state, and zip code). Through this process, the document becomes searchable, such as by city, state, etc. See paragraphs 0042-3. See also paragraphs 0044-5 and 0049-50 for context. After the information is stored in the system, the resumes and job listings are matched. Carpenter states that a search is performed on the resumes and a set of resumes with a relevant percentage rate are returned as good matches. Therefore a proportion (a ratio) of the entire pool of resumes is returned as results to the search according [to] the percentage match (another ratio) of the resumes to the job listings. See paragraph 0054.

Looking to the provisional for support that the inventor had possession of the invention at time of filing, the provisional application of Carpenter et al. discusses such ***storing document [sic] and making them searchable*** (See at least pages [sic]), as well as ***returning a proportion of the entire pool of resumes*** (See at least pages 2, 4, 7-9, which discloses the concept based searching technology. See pages 12, 16, 19, where search results that are gained that are a portion of the entire pool).

Initially, however, as conceded by the Examiner (see above), the Examiner is not entitled to rely on the Carpenter *Publication*, *per se*, but is entitled to rely on the Carpenter *Publication*

only to the extent that the Carpenter *Provisional* supports (anticipates) the feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category*. As illustrated in the above quoted Examiner's Answer itself, and as discussed further below, the Examiner has failed to show that the Carpenter *Provisional* fully supports (anticipates) the portions of the Carpenter *Publication* relied on by the Examiner, let alone supports (anticipates) the claimed feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category*. Contrary to the Examiner's contention, neither the Carpenter *Publication* nor the Carpenter *Provisional* supports (anticipates) the feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category*.

a. *The Carpenter Provisional Does Not Demonstrate Possession of the Feature of Calculating a Ratio of Resumes Associated with [a] Matched Employment Market Category to Job Listings Associated with the Matched Employment Market Category*

Nowhere in the Examiner's Answer does the Examiner identify a portion of the Carpenter *Provisional* that ***describes*** the claimed feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category*. The portion of the Examiner's Answer cited above does not do so. A mere discussion of storing documents and making them searchable and returning a proportion of an entire pool of resumes in response to a search of web pages, as highlighted by the Examiner, does *not* describe and thereby demonstrate that Carpenter *et al.* had possession, at the time of filing the Carpenter *Provisional*, of a method, system, or computer program product including the claimed feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the*

matched employment market category. Because its written description is inadequate at least with respect to such feature, Appellants submit that the Carpenter *Provisional* does not support (anticipate) any of claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33.

b. The Carpenter Provisional Does Not Enable Making and Using the Feature of Calculating a Ratio of Resumes Associated with [a] Matched Employment Market Category to Job Listings Associated with the Matched Employment Market Category

The Examiner also has not met the burden of demonstrating that the Carpenter *Provisional enables* each feature of claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33.

Appellants submit that the discussion in the Carpenter *Provisional* of merely storing documents and making them searchable and returning a proportion of an entire pool of resumes in response to a search does not teach one of skill in the art of the manner and process of making and using a system or computer program product or using a method including the feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category*. Because it does not enable at least this feature, the Carpenter *Provisional* does not support (anticipate) any of claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33.

c. The Carpenter Publication Does Not Anticipate the Feature of Calculating a Ratio of Resumes Associated with [a] Matched Employment Market Category to Job Listings Associated with the Matched Employment Market Category

Even though the Examiner concedes that in order for the Carpenter *Publication* to anticipate claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33, each feature of these claims must be anticipated by the Carpenter *Provisional*, the Examiner also asserts that the Carpenter *Publication, per se*, anticipates the feature of calculating a ratio of resumes to job listings. However, contrary to the Examiner's contentions, "using the contents of the new job posting as query input to perform a concept based search on the resumes in the searchable

content data base [which results in] a set of resumes that meet a relevant percent rate with respect to the job posting content[,]” as recited at paragraph [0054] of the *Carpenter Publication*, does not constitute *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category*. Therefore, even if support in the *Carpenter Publication*, *per se*, would be sufficient (which Appellants do not concede), Appellants submit that the Examiner has failed to demonstrate that the *Carpenter Publication* establishes possession or enablement of at least the claimed feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category*, and that the *Carpenter Publication*, *per se*, does not anticipate any of claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33.

4. *Neither the Carpenter Publication Nor the Carpenter Provisional Anticipates the Features of Incrementing a First Counter Associated With [a] Matched Employment Market Category When [an] Employment Resource Is a Resume and Incrementing a Second Counter Associated With the Matched Employment Market Category When the Employment Resource Is a Job Listing*

The Examiner's Answer, at pages ten through twelve, states the following basis for anticipation of the features of “incrementing first and second counters” (emphasis added):

As to incrementing first and second counters, the provisional expressly discloses *maintaining an indexed database of job listings collected from the internet* (see “The GIG Jobs Database”) and *the resume postings of users*, *indexing* being a form of counting inherent in computer databases which collect, store, and provide access to the stored data.

....

Specifically, *with regards to the “incrementing a counter” feature (2), Examiner notes reliance on Carpenter nonprovisional, specifically paragraphs 0046-7, 0054-6, to teach this limitation.* A spider engine in the system collects data, which is indexed and stored. As information is retrieved and stored, operating parameters of the system are dynamically updated. Limits are checked against amounts of new data in order to determine whether to postpone the spider engine or increase its capability. Therefore, a spider retrieves resume and job posting content. In the broadest reasonable interpretation, a “counter” is anything used to keep a count of something. In the system of Carpenter, the amount of data stored is tracked and when the amount is higher than [sic] a limit, the spider's activity is changed. The system

also maintains count of the age of documents. Therefore, Carpenter teaches counters associated with the data of the system. See paragraphs 0046-8.

Looking to the provisional for support that the inventor had possession of the invention at time of filing, the provisional application of Carpenter et al. discusses ***spider technology and counting documents***. See pages 8-9, 11-12, which discloses spider tools, real time indexes, and data collection.

However, as conceded by the Examiner (see above), the Examiner is not entitled to rely on the Carpenter *Publication*, *per se*, but is entitled to rely on the Carpenter *Publication* only to the extent that the Carpenter *Provisional* supports (anticipates) the features of *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*. As illustrated in the above quoted Examiner's Answer, and as discussed further below, the Examiner has failed to show that the Carpenter *Provisional* fully supports (anticipates) the portions of the Carpenter *Publication* relied on by the Examiner, let alone supports (anticipates) the claimed features of *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*. Contrary to the Examiner's contentions, neither the Carpenter *Publication* nor the Carpenter *Provisional* supports (anticipates) the features of *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*.

a. *The Carpenter Provisional Does Not Demonstrate Possession of the Features of Incrementing a First Counter Associated With [a] Matched Employment Market Category When [an] Employment Resource Is a Resume and Incrementing a Second Counter Associated With the Matched Employment Market Category When the Employment Resource Is a Job Listing*

Nowhere in the above quoted Examiner's Answer does the Examiner identify a portion of the Carpenter *Provisional* that ***describes*** the features of *first and second counters associated with a matched employment market category*, let alone the *claimed* features of *incrementing a first counter associated with the matched employment market category when the employment resource is a resume*, and *incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*. A mere discussion of spider technology, counters, counting documents, and maintaining an indexed database of job listings collected from the internet and resume postings of users, as highlighted by the Examiner, does not describe or otherwise demonstrate that Carpenter *et al.* had possession, at the time of filing the Carpenter *Provisional*, of a method, system, or computer program product including the features of *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume*, and *incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*. Therefore, because its written description is inadequate at least with respect to these features, Appellants submit that the Carpenter *Provisional* does not support (anticipate) any of claims 4, 16, 27, and 34-46.

b. The Carpenter Provisional Does Not Enable Making and Using the Features of Incrementing a First Counter Associated With [a] Matched Employment Market Category When [an] Employment Resource Is a Resume and Incrementing a Second Counter Associated With the Matched Employment Market Category When the Employment Resource Is a Job Listing

Appellants submit that the Examiner has not met the burden of demonstrating that the Carpenter *Provisional* **enables** each feature of claims 4, 16, 27, and 34-46. (See M.P.E.P. §§ 2121.01 and 2161.) Appellants submit that the mere discussion in the Carpenter *Provisional* of spider technology, counters, counting documents, and maintaining an indexed database of job listings collected from the internet and resume postings of users does not teach one of skill in the art of the manner and process of making and using a system or computer program product or using a method including a process including the features of *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*. Because it does not enable at least these features, the Carpenter *Provisional* does not support (anticipate) any of claims 4, 16, 27, and 34-46.

c. The Carpenter Publication Does Not Anticipate the Features of Incrementing a First Counter Associated With [a] Matched Employment Market Category When [an] Employment Resource Is a Resume and Incrementing a Second Counter Associated With the Matched Employment Market Category When the Employment Resource Is a Job Listing

Even though the Examiner concedes that in order for the Carpenter *Publication* to anticipate each of claims 4, 16, 27, and 34-46, each feature of these claims must be anticipated by the Carpenter *Provisional*, the Examiner asserts that the Carpenter *Publication*, *per se*, anticipates the features of “incrementing first and second counters.” However, contrary to the Examiner's contentions, the “counting” associated with comparing “the content retrieved at step 6.2 with the content previously stored in the searchable content

database [to determine] whether the changed limit has been exceeded[,]" as recited at paragraph [0047] of the Carpenter *Publication*, does not constitute *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*. Therefore, even if support in the Carpenter *Publication*, *per se*, would be sufficient (which Appellants do not concede), Appellants submit that the Examiner has failed to demonstrate that the Carpenter *Publication* establishes possession or enablement of at least the claimed feature of *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing*, and that the Carpenter *Publication*, *per se*, does not anticipate any of claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33.

B. The Rejection of Claims 3-6, 9, 10, and 34-37 Under 35 U.S.C. § 101 as Allegedly Being Ineligible for Patenting Is Improper

In a new ground of rejection, the Examiner's Answer, at page three, rejected claims 3-6, 9, 10, and 34-37 under 35 U.S.C. § 101 as allegedly being ineligible for patenting. Contrary to the Examiner's contention, Appellants submit that each of claims 3-6, 9, 10, and 34-37 recites a method including patent-eligible subject matter under 35 U.S.C. § 101.

The Examiner's Answer, at page three, states:

For a process to be patentable subject matter under § 101 the process must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform subject matter to a different state or thing. See *Diamond v. Diehr*, 450 US 175, 184 (1981); *Parker v. Flook*, 437 US 584, 588 n9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 US 780, 787-88 (1876).

This standard for determining whether a process is directed to patent-eligible subject matter under 35 U.S.C. § 101 was recently reiterated by the United States Court of Appeals for the

Federal Circuit: “a process claim satisfies § 101 *either* by showing that his claim is tied to a particular machine, *or* by showing that his claim transforms an article.” *In re Bilski*, No. 2007-1130, slip op. at 24 (Fed. Cir. Oct. 30, 2008) (emphasis added).

Appellants submit that each of claims 3-6, 9, 10, and 34-37 clearly recites patent-eligible subject matter for a method including at least a process of *accessing an employment resource via the network*. See *In re Bilski* (*id.* at 22-23; citing *In re Comiskey* as correctly applying the particular machine - transformation test); *In re Comiskey*, No. 2006-1286, slip op. at 23-24 (Fed. Cir. Sep. 20, 2007) (finding claims for a process tied to “the Internet, intranet, World Wide Web, software applications, telephone, television, cable, video [or radio], magnetic, electronic communications, or other communications means” to be patent-eligible subject matter).

C. Conclusion

Claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 are not anticipated by the Carpenter *Publication* because:

(1) the present patent application is entitled to the benefit of the April 25, 2000, filing date of its provisional patent application, which predates the February 21, 2001, filing date of the Carpenter *Publication*;

(2) the Carpenter *Publication* is *not* entitled to the benefit of the February 4, 2000, filing date of the Carpenter *Provisional* because:

(a) the Carpenter *Provisional* does not demonstrate possession or enablement of at least the feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category* as recited in each of claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33; and

(b) the Carpenter *Provisional* does not demonstrate possession or enablement of the features of *incrementing a first counter associated with [a] matched employment*

market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing, as recited in each of claims 4, 16, 27, and 34-46; and

(3) the Carpenter *Publication*, *per se*, does **not** anticipate the claimed invention because:

(a) the Carpenter *Publication* does not demonstrate possession *or* enablement of at least the feature of *calculating a ratio of resumes associated with [a] matched employment market category to job listings associated with the matched employment market category* as recited in each of claims 3, 5-10, 15, 17, 18, 21-23, 26, 28, 29, 32, and 33; and

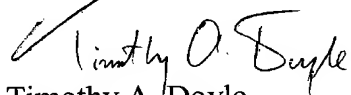
(b) the Carpenter *Publication* does not demonstrate possession or enablement of the features of *incrementing a first counter associated with [a] matched employment market category when the employment resource is a resume, and incrementing a second counter associated with the matched employment market category when the employment resource is a job listing, as recited in each of claims 4, 16, 27, and 34-46.*

Additionally, claims 3-6, 9, 10, and 34-37 are directed to patent-eligible subject matter under 35 U.S.C. § 101 as explained in *In re Bilski* citing *In re Comiskey*.

Appellants respectfully request that the Board reverse the Examiner's rejection of claims 3-6, 9, 10, 15-18, 21-23, 26-29, and 32-46 under 35 U.S.C. § 102(e) and the Examiner's rejection of claims 3-6, 9, 10, and 34-37 under 35 U.S.C. § 101 and remand the present patent application for further examination.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Timothy A. Doyle". The signature is written in a cursive, flowing style.

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